

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

KEVIN W. KELLEY,

Plaintiff,

vs.

Civil Action No. 09-CV-14318
HON. MARK A. GOLDSMITH

STEEL TRANSPORT, INC., et al.,

Defendants.

**ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTION IN
LIMINE "TO STRIKE PLAINTIFF'S PROPOSED ACCIDENT RECONSTRUCTION
EXPERT WITNESS JAMES POULIOT" (D.E. 26)**

Before the Court is the Defendants' motion to strike the testimony of Plaintiff's proposed expert witness, James Pouliot. The motion was fully briefed and on May 13, 2011, the Court held a hearing on the motion.

For the reasons set forth on the record at the hearing, the Court grants, in part, and denies, in part, the motion as follows:

- 1) Pouliot will not be permitted to testify to his conclusion about the distance between the area of impact and the resting location of the tractor trailer because he made his calculations based upon Defendant Waite traveling 10 miles per hour at the point of impact, rather than the 4-6 miles per hour supported by the evidence. Nor will Pouliot be permitted to present any revised conclusions based upon subsequent calculations made after his deposition.
- 2) The Court rejects Defendant's argument that Pouliot should be prohibited from opining that Kelley had the right of way in the right travel lane on the theory that Pouliot's opinion is based upon an incorrect calculation of the lane width. Pouliot's testimony will not be prohibited on this basis.
- 3) Pouliot's testimony about the turning of and positioning of the tractor trailer does not appear to be an expert opinion and is not based on scientific methods. He will not be permitted to testify in this regard.

- 4) Pouliot will not be permitted to testify to his opinion that Defendant Waite could not have activated his right turn signal while making a left turn. As Plaintiff conceded at the hearing, Pouliot's opinion was based on a mistaken assumption of fact.
- 5) Pouliot's will not be permitted to testify to his opinion that Kelley's injuries were consistent with the damage on the tractor trailer because such testimony does not qualify as expert testimony.

SO ORDERED.

s/Mark A. Goldsmith
MARK A. GOLDSMITH
United States District Judge

Dated: May 13, 2011
Flint, Michigan

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court's ECF System to their respective email or First Class U.S. mail addresses disclosed on the Notice of Electronic Filing on May 13, 2011.

s/Deborah J. Goltz
DEBORAH J. GOLTZ
Case Manager